

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

DYLAN J. TREVINO, a minor, suing)	
by his next friend and guardian,)	
DIANA TREVINO, and DIANA)	
TREVINO, Individually,)	
)	
Plaintiffs,)	
)	Civil Action No: 1:10-cv-00115
v.)	
)	JUDGE HAYNES
BLITZ U.S.A., INC.; LAM 2011)	
HOLDINGS, LLC, f/k/a BLITZ)	JURY DEMANDED
HOLDINGS, LLC; KINDERHOOK)	
CAPITAL FUND II, L.P.; BLITZ)	
ACQUISITION HOLDINGS, INC.;)	
BLITZ ACQUISITION, LLC; and)	
BLITZ RE HOLDINGS, LLC,)	
)	
Defendants.)	

JOINT MOTION FOR ADDITIONAL AMOUNT OF TIME

Defendants LAM 2011 Holdings, LLC f/k/a Blitz Holdings, LLC; Kinderhook Capital Fund II, L.P.; Blitz Acquisition Holdings, Inc.; Blitz Acquisition, LLC.; and Blitz RE Holdings, LLC (collectively, the “New Defendants”) move the Court, pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, for an additional amount of time to disclose fact witnesses and provide all information specified in Federal Rule 26(a)(1)(A).

On September 8, 2011, Plaintiffs moved the Court for leave to file an amended complaint to name the above-referenced entities as new defendants to the suit. [ECF No. 44] This suit was originally filed solely against Blitz U.S.A., Inc. on December 20, 2010. [ECF No. 1] The New Defendants were added about nine months later, when Plaintiff’s motion for leave was granted on September 9, 2011. [ECF No. 45] Under an agreement between the parties, the New

Defendants have until November 7, 2011 to answer or move to dismiss. [ECF No. 70] The Case Management Order in this case calls for disclosure of the identity of fact witnesses and all information specified in Rule 26(a)(1)(A) by the close of business today, October 28, 2011. [ECF No. 29] On October 26 and 27, the New Defendants conferred with Plaintiffs' counsel regarding the relief sought in this Motion. Plaintiffs did not consent.

The New Defendants seek an additional amount of time on three bases: (i) the New Defendants object to the jurisdiction of this Court and should not be compelled to enter discovery in this action until the Court has rendered a decision as to whether jurisdiction has been properly asserted;¹ (ii) the New Defendants were made party to this action only recently and have not had sufficient time to gather information necessary to comply with the Case Management Order; and (iii) Plaintiffs would suffer no prejudice as the result of an enlargement of time for the New Defendants, nor would the currently agreed trial date be delayed.

First, the New Defendants should not be compelled to act as parties to this action because this Court lacks personal jurisdiction over them as will be shown in the New Defendants' motions to dismiss — motions that have yet to be filed pursuant to the agreed stipulation between the parties. The New Defendants' motions to dismiss will be fully briefed by December, leaving the parties ample time to complete discovery pursuant to the Case Management Order should the Court deny these motions. This reason, independently, constitutes good cause for an additional amount of time.

Second, the New Defendants are not yet in a position to identify fact witnesses and provide all information specified in Federal Rule 26(a)(1)(A). Plaintiffs Dylan and Diana Trevino and Defendant Blitz U.S.A., Inc., the parties to the original Complaint filed December

¹ The New Defendants file this Motion without prejudice to their claims or defenses, including, without limitation, any defense based on lack of personal jurisdiction.

20, 2010, agreed at the scheduling conference in March 2011 to give each other nearly seven months in order to collect this information. The New Defendants, on the other hand, have had less than seven weeks from the time that they were served with the Amended Complaint. It is inequitable to put such an onerous obligation on the New Defendants when the original parties have had abundant time to respond.

Third, Plaintiffs would suffer no prejudice as the result of an enlargement of time for the New Defendants. As stated above, if the Court were to deny the New Defendants' motions to dismiss, the New Defendants would nevertheless have sufficient time to comply with subsequent discovery deadlines set forth in the Case Management Order. Thus, there would be no prejudice to any other party to this action and the trial could proceed as currently scheduled.

For all of the foregoing reasons, the New Defendants respectfully request an additional amount of time to identify their fact witnesses until after the Court decides the soon-to-be-filed motions to dismiss, as well as of any other immediate deadlines in the Court's Case Management Order. In the alternative, and consistent with the relief requested, the New Defendants would identify by cross-reference any fact witnesses disclosed by Plaintiffs or Blitz U.S.A., Inc. and reserve the right to supplement their responses.

Respectfully submitted,

/s/ Wendy M. Warren
Wallace W. Dietz (TN BPR No. 009949)
wdietz@bassberry.com
Wendy M. Warren (TN BPR No. 021880)
wwarren@bassberry.com
BASS, BERRY & SIMS, PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
Telephone: (615) 742-6200
Facsimile: (615) 742-0417

Timothy P. Harkness (pro hac vice)
timothy.harkness@freshfields.com
Pamila Gudkov (pro hac vice)
mila.gudkov@freshfields.com
FRESHFIELDS BRUCKHAUS DERINGER US LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 277-4000
Facsimile: (212) 277-4001

*Attorneys for Defendant Kinderhook Capital Fund
II, L.P.*

/s/ John R. Tarpley / WMW with permission
John R. Tarpley (TN BPR No. 9661)
jtarpley@lewisking.com
David A. Changas (TN BPR No. 20679)
dchangas@lewisking.com
Lewis, King, Krieg & Waldrop, P.C.
424 Church Street, Suite 2500
Post Office Box 198615
Nashville, TN 37219
Telephone: (615) 259-1366
Facsimile: (615) 259-1389

Mark C. Hegarty (pro hac vice)
mhegarty@shb.com
Douglas S. Beck (pro hac vice)
dbeck@shb.com
Adrienne Hernandez (pro hac vice)
ahernandez@shb.com
SHOOK, HARDY & BACON, L.L.P
2555 Grand Blvd.
Kansas City, MO 64108-2613
Telephone: (816) 474-6550
Facsimile: (816) 421-5542

*Attorneys for Defendants Blitz, U.S.A., Inc.; LAM
2011 Holdings, LLC f/k/a Blitz Holdings, LLC;
Blitz Acquisition Holdings, Inc.; Blitz Acquisition,
LLC; and Blitz RE Holdings, LLC*

CERTIFICATE OF SERVICE

I do hereby certify I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system on this 28th day of October, 2011, which will send a notice of electronic filing to the following:

David Jones, Esq.
Logan & Lowry, LLP
102 East 3rd Street
Grove, OK 74345-2469

Hank Anderson, Esq.
Anderson Law Firm
4245 Kemp Blvd.
Suite 810
Wichita Falls, TX 76308

Daniel L. Clayton, Esq.
Randall L. Kinnard, Esq.
Kinnard, Clayton & Beveridge
127 Woodmont Boulevard
Nashville, TN 37201

/s/ Wendy M. Warren
Wendy M. Warren